

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of 4.17.102, 4.17.106 and)	AMENDMENT
4.17.114 relating to the organic)	
certification program)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On August 25, 2007, the Montana Department of Agriculture proposes to amend the above stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 9, 2007, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

4.17.102 ADOPTION OF NATIONAL ORGANIC PROGRAM REGULATIONS

(1) through (1)(iv) remain the same.

(2) The department adopts and incorporates by reference the (European Council Regulation (EEC)) Number 2092/91, as adopted June 24, 1991, and amended as follows:

<u>EEC 1535/92, June 15, 1992</u>	<u>EC 331/2000, December 17, 1999</u>
<u>EEC 2083/92, July 14, 1992</u>	<u>EC 1073/2000, May 19, 2000</u>
<u>EEC 207/93, January 29, 1993</u>	<u>EC 1437/2000, June 30, 2000</u>
<u>EEC 2608/93, September 23, 1993</u>	<u>EC 2020/2000, September 25, 2000</u>
<u>EC 468/94, March 2, 1994</u>	<u>EC 436/2001, March 2, 2001</u>
<u>EC 1468/94, June 20, 1994</u>	<u>EC 2491/2001, December 19, 2001</u>
<u>EC 2381/94, September 30, 1994</u>	<u>EC 473/2002, March 15, 2002</u>
<u>EC 1201/95, May 29, 1995</u>	<u>EC 223/2003, February 5, 2003</u>
<u>EC 1202/95, May 29, 1995</u>	<u>EC 599/2003, April 1, 2003</u>
<u>EC 1935/95, June 22, 1995</u>	<u>EC 806/2003, April 14, 2003</u>
<u>EC 418/96, March 7, 1996</u>	<u>EC 2277/2003, December 22, 2003</u>
<u>EC 1488/97, July 29, 1997</u>	<u>EC 392/2004, February 24, 2004</u>
<u>EC 1900/98, September 4, 1998</u>	<u>EC 746/2004, April 22, 2004</u>
<u>EC 330/99, February 12, 1999</u>	<u>EC 779/2004, April 26, 2004</u>
<u>EC 1804/99, July 19, 1999</u>	

(2) remains the same but is renumbered (3).

~~(3)~~ (4) References in the adopted federal regulations to "certifying agent" may be taken to mean the department as used in this ~~manual~~ rule.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: Producers and handlers certified by the department have asked us to provide European Union organic certification. Adoption of the European Council Regulation Number 2092/91 is necessary to facilitate the export of organic products to the European Union. By facilitating access to high value export markets for organic crops and products, this service enhances the competitiveness and sustainability of Montana organic agriculture.

4.17.106 APPLICATION FEES AND FEES FOR SERVICES (1) through (1) (d) remain the same.

(e) an additional application fee is \$250 for each additional certification requested;

(e) through (e)(iii) remain the same but are renumbered (f) through (f)(iii).

(f) remains the same but is renumbered (g).

(2) through (2)(d) remain the same.

(e) an additional application fee is \$250 for each additional certification requested; and

(e) remains the same but is renumbered (f).

(3) through (9) remain the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: International Standards Organization Guide 65 accreditation requires a yearly program review and audit by the United States Department of Agriculture, Agricultural Marketing Service. In order to pay for the audit costs, approximately \$15,000 per audit, a fee is necessary to generate revenue to cover the costs of annual accreditation. Note that the fee is for each additional certification a producer or handler wishes to have. Currently, the department certifies producers and handlers to verify compliance with three other standards allowing producers and handlers to also access organic markets in Switzerland, Japan, and Quebec, Canada.

This administrative rule will primarily impact organic grain producers and handlers as grains are Montana's principle organic export product. There are currently 42 certified organic producers and handlers who may be impacted by the additional application fee. Of these 42, perhaps 28 will seek European Union certification and possibly another 12 may seek other certifications (Switzerland, Japan, or Quebec, Canada) for a total of approximately 40 additional certifications.

It is anticipated that the department will receive eight requests for compliance for BioSuisse (Switzerland) certification, and four requests for compliance with the

United States Department of Agriculture (USDA) Japanese Ministry of Agriculture, Food and Fisheries (MAFF) export arrangement. Currently, we do not have any requests for Quebec, Canada. Therefore, the financial impact is estimated to generate an additional \$10,000 of revenue for the department each year (European Union, 28 certifications x \$250 = \$7,000; BioSuisse, 8 certifications x \$250 = \$2,000; and Japan, 4 certifications x \$250 = \$1,000).

4.17.114 COMPLIANCE ENFORCEMENT AND PENALTIES (1) remains the same.

(a) the department and applicants for certification will follow procedures established in 7 CFR 205, subpart (e) in addressing ~~non-compliance~~ noncompliance issues under National Organic Program standards;

(b) the department and certified operations will follow procedures established in 7 CFR 205, subpart (g) in addressing ~~non-compliance~~ noncompliance issues under National Organic Program standards;

(c) the department's procedure for denying certification under National Organic Program standards will adhere to that established in 7 CFR 205, subpart (e); and

(d) any notice of denial of certification or proposed suspension or revocation of certification will state the person's right to mediation ~~as provided by 7 CFR 205.663~~. The department's mediation procedures will be consistent with that established in 7 CFR 205.663 and the department may incorporate procedures for mediation established by state statutes.

(2) through (6) remain the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: International Standards Organization Guide 65 requires those certified (producers and handlers) to the standard to be in compliance with the international standards and requires accredited certifiers and the Department of Agriculture to enforce the international standards. Adoption of this administrative rule indicates which standards the department will follow in compliance and enforcement activities.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than August 23, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than August 23, 2007.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12 persons based on 120 organic operations certified by the department.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on July 10, 2007 by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Joel A. Clairmont

Joel A. Clairmont, Acting Director

/s/ Gregory H. Ames

Gregory H. Ames, Administrator
Rule Reviewer

Certified to the Secretary of State, July 16, 2007.